IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2007

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THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

Writ Petition No.27911 of 2004
and
W.P.M.P.Nos.33924 of 2004 and 15260 of 2005

V.Manoharan ... Petitioner.

Vs

1.The District Collector,
Coimbatore South, Coimbatore-18.

2.The Tahsildar, Taluk Office,
Coimbatore South, Coimbatore-18.

3.The Assistant Commissioner of Labour,
Controlling Authority under the Payment
of Gratuity Act,
Dr.Balasundaram Road, Coimbatore-18.

4.S.R.K.Prasad ... Respondents.
R-4 impleaded as per order dated 12.01.2007
in W.P.M.P.No.26702 of 2005.

Prayer:- Writ petition under Article 226 of the Constitution of India praying for the issuance of the writ of certiorarified mandamus calling for the records relating to the order of the 2nd respondent in Proceeding No.182/2001/B1 dated 26.07.2004, quash the same and consequently, forbear the respondents from taking any action against the petitioner for recovery of gratuity liability in respect of Ramakrishna Industries Pvt. Ltd.

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For Petitioner : Mr.R.Parthiban

For Respondent : Mr.N.Senthil Kumar, AGP.

O R D E R

Challenge is made to an order of the second respondent in Proceedings No. 182/2001/B1 dated 26.07.2004 and forbear the respondents from taking any action against the petitioner for recovery of gratuity liability in respect of Ramakrishna Industries Private Limited, Coimbatore.

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2. The affidavit filed in support of the writ petition is perused and the Court heard the learned counsel on either side.

3. Admittedly, M/s. Ramakrishna Industries Private Limited, Coimbatore, was started during the year 1946 by two brothers, viz., R.Venkatasamy Naidu, the petitioner's father and P.R.Ramakrishnan. Due to difference of opinion between the two Directors, a Company Petition came to be filed before this Court in C.P.No.30 of 1981 and the Official Liquidator has been appointed as Provisional Liquidator in charge of the affairs of the company. While the matters stood thus, a memorandum of undertaking has been entered between the Directors of the Company on 31.03.1995, whereby the liability was fixed at Rs.72,93,149/- and following the same, a proceeding was initiated by the 2nd respondent, which is under challenge before this Court.

4. The only contention put forth by the learned counsel for the petitioner is that both the petitioner and the other Director have entered into a memorandum of undertaking, which was also recorded in the Company Petition, and pursuant to the same, the petitioner was liable to pay 50% of the gratuity amount, which was also settled by the petitioner. Thus, the petitioner is not liable to pay any amount and only the other Director is liable to pay the remaining amount as per the undertaking. Though it has been brought to the notice of the authority, without initiated proceedings against the other Director for the recovery of the same, now the authority insisted that the petitioner is liable to pay the amount as per the undertaking and has also initiated proceedings against the mill in question, which is with the petitioner and hence the writ has got to be issued.

5. The only answer given by the counsel for the respondents is that an order came to be passed in the year 2003 by the third respondent and that order has not been challenged and hence, it has become final. Pursuant to the order passed by the third respondent, now proceedings have been initiated for recovery of the same and the memo of undertaking entered into between the Directors of the Company would not be binding upon the Department. Under such circumstances, the writ petition has got to be dismissed.

6. At this juncture, it is also brought to the notice of the Court by the learned counsel for the respondents that though the impugned notice has been sent to the petitioner and the other Director, neither the petitioner nor the other Director appeared before the authorities. Taking into consideration the submissions made by either side and the also the facts and circumstances of the case, the Court is of the considered opinion that it is not a fit case, where a writ could be ordered. Once an order came to be passed by the third respondent, the Assistant Commissioner of

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Labour, in the year 2003, it is open to the petitioner or the other Director, viz., the fourth respondent, to challenge the same. But they have not done so. Now at this juncture, after the issuance of the notice in question calling for the payment, neither the petitioner nor the fourth respondent appeared before the Authority to explain the circumstances or the alleged payments. Hence, though a writ could not be issued, it would be fit and proper to give a direction that an opportunity should be given to the petitioner to appear before the second respondent and explain the circumstances and also produce the necessary records for the alleged payment of the gratuity amount to the workers as contended by the counsel for the petitioner herein. Accordingly, the petitioner and the fourth respondent is directed to appear before the concerned authority within a period of four weeks here from.

7. The writ petition is disposed of accordingly. Connected W.P.M.Ps. are closed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

bs/

To

1.The District Collector,
Coimbatore South, Coimbatore-18.

2.The Tahsildar, Taluk Office,
Coimbatore South, Coimbatore-18.

3.The Assistant Commissioner of Labour,
Controlling Authority under the Payment
of Gratuity Act,
Dr.Balasundaram Road, Coimbatore-18.

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1 cc to M.R. Parthiban, Advocate, SR. 57063
1 cc to Government Pkleader, sr. 57162

W.P.No.27911 of 2004

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